

the instruments you will use for monitoring these parameters.

§ 60.5180 Do the emission limits, emission standards, and operating limits apply during periods of startup, shutdown, and malfunction?

The emission limits and standards apply at all times and during periods of malfunction. The operating limits apply at all times that sewage sludge is in the combustion chamber (*i.e.*, until the sewage sludge feed to the combustor has been cut off for a period of time not less than the sewage sludge incineration residence time). For determining compliance with the CO concentration limit using CO CEMS, the correction to 7 percent oxygen does not apply during periods of startup or shutdown. Use the measured CO concentration without correcting for oxygen concentration in averaging with other CO concentrations (corrected to 7 percent O₂) to determine the 24-hour average value.

§ 60.5181 How do I establish an affirmative defense for exceedance of an emission limit or standard during malfunction?

In response to an action to enforce the numerical emission standards set forth in paragraph § 60.5165, you may assert an affirmative defense to a claim for civil penalties for exceedances of emission limits that are caused by malfunction, as defined in § 60.2. Appropriate penalties may be assessed however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that the conditions in paragraphs (a)(1) through (a)(9) of this section are met.

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and (ii) Could not have been prevented through careful planning,

proper design or better operation and maintenance practices, and (iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for, and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance, and

(2) Repairs were made as expeditiously as possible when the applicable emission limits were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs, and (3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions, and (4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health, and

(6) All emissions monitoring and control systems were kept in operation if at all possible consistent with safety and good air pollution control practices, and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, and

(8) At all times, the affected facility was operated in a manner consistent with good practices for minimizing emissions, and

(9) A written root cause analysis has been prepared the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) The owner or operator of the SSI unit experiencing an exceedance of its emission limit(s) during a malfunction, shall notify the Administrator by telephone or facsimile (fax) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to

avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in § 60.5165 to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

MODEL RULE—INITIAL COMPLIANCE
REQUIREMENTS

§ 60.5185 How and when do I demonstrate initial compliance with the emission limits and standards?

To demonstrate initial compliance with the emission limits and standards in Table 2 or 3 to this subpart, use the procedures specified in paragraph (a) of this section. In lieu of using the procedures specified in paragraph (a) of this section, you have the option to demonstrate initial compliance using the procedures specified in paragraph (b) of this section for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans (total mass basis or toxic equivalency basis), mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and fugitive emissions from ash handling. You must meet the requirements of paragraphs (a) and (b) of this section, as applicable, and paragraphs (c) through (e) of this section, according to the performance testing, monitoring, and calibration requirements in § 60.5220(a) and (b).

(a) Demonstrate initial compliance using the performance test required in § 60.8. You must demonstrate that your SSI unit meets the emission limits and standards specified in Table 2 or 3 to this subpart for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans (total mass basis or toxic equivalency basis), mercury, ni-

trogen oxides, sulfur dioxide, cadmium, lead, and fugitive emissions from ash handling using the performance test. The initial performance test must be conducted using the test methods, averaging methods, and minimum sampling volumes or durations specified in Table 2 or 3 to this subpart and according to the testing, monitoring, and calibration requirements specified in § 60.5220(a).

(1) Except as provided in paragraph (e) of this section, you must demonstrate that your SSI unit meets the emission limits and standards specified in Table 2 or 3 to this subpart by your final compliance date (see Table 1 to this subpart).

(2) You may use the results from a performance test conducted within the 2 previous years that was conducted under the same conditions and demonstrated compliance with the emission limits and standards in Table 2 or 3 to this subpart, provided no process changes have been made since you conducted that performance test. However, you must continue to meet the operating limits established during the most recent performance test that demonstrated compliance with the emission limits and standards in Table 2 or 3 to this subpart. The performance test must have used the test methods specified in Table 2 or 3 to this subpart.

(b) Demonstrate initial compliance using a continuous emissions monitoring system or continuous automated sampling system. The option to use a continuous emissions monitoring system for hydrogen chloride, dioxins/furans, cadmium, or lead takes effect on the date a final performance specification applicable to hydrogen chloride, dioxins/furans, cadmium, or lead is published in the FEDERAL REGISTER. The option to use a continuous automated sampling system for dioxins/furans takes effect on the date a final performance specification for such a continuous automated sampling system is published in the FEDERAL REGISTER. Collect data as specified in § 60.5220(b)(6) and use the following procedures:

(1) To demonstrate initial compliance with the emission limits specified in Table 2 or 3 to this subpart for particulate matter, hydrogen chloride,